STATE OF MICHIGAN

COURT OF APPEALS

ROBERTA FIELDS,

Plaintiff-Appellant,

and

LLOYD FIELDS,

Plaintiff,

v

WESTBAY MANAGEMENT COMPANY, MICHAEL G. EYDE, SAMUEL X. EYDE, and the ESTATE OF PATRICK R. EYDE, Deceased,

Defendants-Appellees.

UNPUBLISHED
October 19, 1999

No. 206526
Ingham Circuit Court
LC No. 96-083114 NO

Before: Hood, P.J., and Holbrook, Jr., and Fitzgerald, JJ.

PER CURIAM.

Plaintiff, Roberta Fields,[1] appeals as of right from an order granting summary disposition in favor of defendants. We reverse.

In March 1996, plaintiff and her friend, a resident of defendants' apartment complex, approached a building located in the complex. Plaintiff observed ice on the sidewalk steps leading to the building. To avoid the ice, plaintiff and her friend walked on the grass along the right side of the steps. Plaintiff crossed the sidewalk and entered the building. When plaintiff exited the building approximately ten minutes later, she allegedly slipped and fell on the icy sidewalk, which caused her injury. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) based on the open and obvious condition of the ice on the sidewalk. Plaintiff opposed the motion for summary disposition by asserting that the open and obvious doctrine did not apply to snow and ice conditions or defendants' failure to maintain the premises. The trial court held that irrespective of the breach of duty alleged, the

open and obvious doctrine required summary disposition in defendants' favor. Plaintiff moved for reconsideration of the trial court's decision which was denied.

Plaintiff first argues that the trial court erred in granting defendants' motion for summary disposition because the open and obvious doctrine does not apply to premises liability actions based on snow and ice conditions. We agree. In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(10), the court must consider the pleadings, affidavits, depositions, and other documentary evidence available to it. *Hughes v PMG Building, Inc*, 227 Mich App 1, 4; 574 NW2d 691 (1997). Summary disposition will be granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. We review summary disposition decisions de novo.[2] *Id.*

An invitor must exercise reasonable care to protect invitees[3] from an unreasonable risk of harm caused by a dangerous condition of the land when the invitor knows or should know that the invitees will not discover, realize, or protect themselves against. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). An invitor has no obligation to warn of an open and obvious condition unless the risk of harm remains unreasonable despite the obviousness of the condition. *Id.* at 611. However, the open and obvious doctrine will not cut off liability in a premises liability action involving snow and ice conditions:

> [W]e reject the prominently cited notion that ice and snow hazards are obvious to all and therefore may not give rise to liability. While the invitor is not an absolute insurer of the safety of the invitee, the invitor has a duty to exercise reasonable care to diminish the hazards of ice and snow accumulation. … As such duty pertains to ice and snow accumulations, it will require that reasonable measures be taken within a reasonable time after an accumulation of ice and snow to diminish the hazard of injury to the invitee. The conduct of the invitee will often be relevant in the context of contributory negligence. [*Quinlivan v Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 261; 235 NW2d 732 (1975).]

In *Perry v Hazel Park Raceway*, 123 Mich App 542, 549-550; 332 NW2d 601 (1983), this Court explained that some conditions, such as icy steps, present unavoidable hazards despite awareness and openness of the presence of the condition. Accordingly, the trial court erred in granting defendants' motion for summary disposition based on the open and obvious doctrine where the complaint alleges that the injury arose as a result of snow and ice conditions.[4]

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Harold Hood
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald

[1] Lloyd Fields, Roberta's husband, joins her as a plaintiff. Because his claim involves a loss of consortium and is dependent on Roberta's claims, we refer to Roberta Fields only as plaintiff.

[2] Although the trial court denied plaintiff's motion for reconsideration regarding this issue, appellate review of the original order granting defendants' motion for summary disposition is appropriate. *Gavulic v Boyer*, 195 Mich App 20, 23-24; 489 NW2d 124 (1992).

[3] The trial court, in reaching its decision, held that plaintiff was an invitee, and the parties do not dispute that conclusion on appeal.

[4] Plaintiff also argues that the open and obvious doctrine applies only to failure to warn cases. We need not address this issue based on our holding that the open and obvious doctrine does not apply to snow and ice conditions. However, we note that the issue raised by plaintiff was addressed in *Milikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 495; 595 NW2d 152 (1999), wherein this Court held that application of the open and obvious doctrine was not limited to failure to warn allegations.